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Attorneys for Plaintiff,  
*EMANUELLE JOCSO*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

EMANUELLE JOCSO,

Plaintiff,

v.

CAPITAL ONE BANK (USA) N.A.,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff, EMANUELLE JOCSO ("Plaintiff"), through his attorneys,  
and hereby alleges the following against CAPITAL ONE BANK (USA) N.A.  
("Defendant"):

**INTRODUCTION**

1  
2 1. Count I of Plaintiffs Complaint is based on negligent  
3 violations of the Telephone Consumer Protection Act 47 U.S.C. § 227 et  
4 seq., (TCPA).

5 2. Count II of Plaintiffs Complaint is based on knowing and/or  
6 willful violations of the Telephone Consumer Protection Act 47 U.S.C. § 227  
7 et seq., (TCPA).

**JURISDICTION AND VENUE**

8  
9 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47  
10 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740  
11 (2012), holding that federal and state courts have concurrent jurisdiction over  
12 private suits arising under the TCPA.

13 4. Venue is proper in the United States District Court for the District of  
14 Nevada pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District  
15 and a substantial part of the events or omissions giving rise to the herein claims  
16 occurred, or a substantial part of property that is the subject of the action is situated  
17 within this District.

**PARTIES**

18  
19 5. Plaintiff is a natural person residing in Clark County, in the city of Las  
20 Vegas, Nevada.

21 6. Defendant is a Virginia corporation, doing business in the State of  
22 Nevada, with its principal place of business located in McLean, Virginia.

23 7. At all times relevant to this Complaint, Defendant has acted through  
24 its agents employees, officers, members, directors, heir, successors, assigns,  
25 principals, trustees, sureties, subrogees, representatives and insurers.

**FACTUAL ALLEGATIONS**

26  
27 8. Defendant is a "person" as defined by 47 U.S.C. § 153 (10).

28 9. Defendant placed collection calls to Plaintiff seeking and attempting to

1 collect on alleged debts incurred through purchases made on credit issued by  
2 Defendant.

3 10. Defendant placed collection calls to Plaintiffs cellular telephone at  
4 phone number (702) 335-40XX.

5 11. Defendant placed collection calls to Plaintiff from phone numbers  
6 including, but not limited to (800) 955-6600.

7 12. Per its prior business practices, Defendant's calls were placed with an  
8 automated telephone dialing system ("auto-dialer").

9 13. Defendant used an "automatic telephone dialing system", as defined  
10 by 47 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a  
11 consumer debt allegedly owed by Plaintiff, EMANUELLE JOCSO.

12 14. Defendant's calls constituted calls that were not for emergency  
13 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

14 15. Defendant's calls were placed to a telephone number assigned to a  
15 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
16 pursuant to 47 U.S.C. § 227(b)(1).

17 16. Defendant never received Plaintiffs "prior express consent" to receive  
18 calls using an automatic telephone dialing system or an artificial or prerecorded  
19 voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

20 17. On or about September 8, 2017, Plaintiff called into Defendant's  
21 company at phone number (800) 955-6600 and spoke with Defendant's male  
22 representative and requested that Defendant cease calling Plaintiffs cellular phone.

23 18. During the conversation on September 8, 2017, Plaintiff gave  
24 Defendant his social security number and date of birth to assist Defendant in  
25 accessing his account before asking Defendant to stop calling his cell phone.

26 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call  
27 his cellular telephone and/or to receive Defendant's calls using an automatic  
28 telephone dialing system in his conversation with Defendant's representative on

1 September 8, 2017.

2 20. Despite Plaintiffs request to cease, Defendant continued to place  
3 collection calls to Plaintiff after September 14, 2017.

4 21. Despite Plaintiffs request that Defendant cease placing automated  
5 collection calls, Defendant placed at least one hundred and forty-seven (147)  
6 automated calls to Plaintiffs cell phone.

7 **FIRST CAUSE OF ACTION**

8 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**

9 **PROTECTION ACT**

10 **(47 U.S.C. § 227)**

11 22. Plaintiff repeats and incorporates by reference into this cause of action  
12 the allegations set forth above at Paragraphs 1-21.

13 23. The foregoing acts and omissions of Defendant constitute numerous  
14 and multiple negligent violations of the TCPA, including but not limited to each  
15 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

16 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et  
17 seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and  
18 every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

19 25. Plaintiff is also entitled to seek injunctive relief prohibiting such  
20 conduct in the future.

21 **SECOND CAUSE OF ACTION**

22 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**

23 **CONSUMER PROTECTION ACT (47 U.S.C. § 227 et. seq.)**

24 26. Plaintiff repeats and incorporates by reference into this cause of action  
25 the allegations set forth above at Paragraphs 1-21.

26 27. The foregoing acts and omissions of Defendant constitute numerous  
27 and multiple knowing and/or willful violations of the TCPA, including but not

28 //

1 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et  
2 seq.

3 28. As a result of Defendant's knowing and/or willful violations of 47  
4 U.S.C. § 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory  
5 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47  
6 U.S.C. § 227(b)(3)(C).

7 29. Plaintiff is also entitled to seek injunctive relief prohibiting such  
8 conduct in the future.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, EMANUELLE JOCSO, respectfully requests  
11 judgment be entered against Defendant, CAPITAL ONE FINANCIAL CORP., for  
12 the following:

13 **FIRST CAUSE OF ACTION**

14 30. For statutory damages of \$500.00 multiplied by the number of  
15 negligent violations of the TCPA alleged herein (147); \$73,500.00;

16 31. Actual damages and compensatory damages according to proof at time  
17 of trial;

18 **SECOND CAUSE OF ACTION**

19 32. For statutory damages of \$1,500.00 multiplied by the number of  
20 knowing and/or willful violations of TCPA alleged herein (147); \$220, 500.00 ;

21 33. Actual damages and compensatory damages according to proof at time  
22 of trial;

23 **ON ALL CAUSES OF ACTION**

24 34. Actual damages and compensatory damages according to proof at time  
25 of trial;

26 35. Costs and reasonable attorneys' fees;

27 36. Any other relief that this Honorable Court deems appropriate.  
28

1  
2 Dated: June 6, 2018

Respectfully submitted,

3 /s/ Mathew K. Higbee  
4 Mathew K. Higbee, Esq.  
5 Nevada Bar No. 11158  
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11 *Counsel for Plaintiff*

12 /s/ Alyson Dykes  
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20 *Counsel for Plaintiff*  
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**DEMAND FOR JURY TRIAL**

Plaintiff, Emanuelle Jocson hereby demands a trial by jury in the above captioned matter.

Dated: June 6, 2018

Respectfully submitted,

**/s/ Mathew K. Higbee**  
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**/s/ Alyson Dykes**  
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